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Outdoor Burning in Texas



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How to Use This Guidance Document

The purpose of this guidance document is to assist the general public, the regulated community, and responsible state and local officials in interpreting the revised Outdoor Burning Rule (Title 30 Texas Administrative Code Sections 111.201–111.221), which became effective September 16, 1996. The main portion of this document consists of an explanation of the rule and its exceptions and a list of answers to frequently asked questions. State and local officials may find the two appendices—a copy of the rule itself and a comparison of each section of the current rule to the rule it replaced—to be particularly useful.

The Outdoor Burning Rule Explained

The current version of the Outdoor Burning Rule is the result of a concerted effort to produce a streamlined, unambiguous rule that could be applied consistently and fairly throughout Texas. The purpose of the rule is to protect the environment, promote public health and safety, and avoid nuisance conditions through the sensible regulation of outdoor burning.

SUMMARY OF THE RULE

The Outdoor Burning Rule first prohibits outdoor burning anywhere within the state of Texas, and then allows for exceptions for specific situations in which burning is necessary or does not pose a threat to the environment. If burning seems necessary, but the situation does not fit an exception stated in the rule, then it is possible to request from the Texas Natural Resource Conservation Commission (TNRCC) a special authorization to conduct burning. The rule also prescribes conditions that must be met to protect the environment and avoid other adverse impacts when burning is allowed.

EXCEPTIONS TO THE RULE

The standard exceptions, explained below, cover the most common situations in which burning is an acceptable practice. In most of these instances, the burning must follow the general conditions outlined later in the rule. It may be necessary to notify the TNRCC, local governmental agencies, and neighbors before conducting burning under one of these exceptions. See Table 1 for details on notification requirements in specific

situations. There may be local ordinances that regulate burning; if so, the requirements and restrictions of those ordinances must also be met.

Table 1. Outdoor Burning: When Should You Notify the TNRCC?

PURPOSE OF BURNING	NOTIFY THE TNRCC...		NOTIFY ANYONE ELSE?	SUBSECTION No.
	IN WRITING...	ORALLY...		
Fire training				
Statewide	10 working days prior	Not required	1	111.205(a)
Dedicated facility, used at least once per week	Annual required	Not required	1	111.205(b)
Dedicated facility, used less frequently	Annual required	Required; must be 24 hours before event	1	111.205(c)
Disposal				
Domestic waste	Not required	Not required	2	111.209(1)
Diseased animal carcasses	Not required	Not required	2	111.209(2)
On-site, clearing	When possible	When possible	2,4	111.209(3)
Crop residue	When possible	When possible	2,4	111.209(4)
Brush, off-site, by county or city	Get prior approval	When possible	2,4	111.209(5)
Prescribed burns				
Other than coastal salt marsh	When possible	When possible	2,3,4	111.211(1)
Coastal salt marsh	15 working days prior	Required	4	111.211(2)
Other				
Oil spills	Upset notification (30 TAC §101.6)	Required	2	111.213
Ceremonial fires	Not required	Not required	2	111.207

Note: This table shows notification requirements only. See also the general requirements for allowable burning given later in this document.

1. If there is a local air pollution control agency, notify that agency.
2. Check local ordinances, and notify any other governmental entity having jurisdiction over the area—for example, the county fire marshal, local fire department, or local law enforcement officials.
3. Notify the Texas Forest Service before conducting prescribed burns for forest management.

4. Before conducting the burn, determine whether any “structures containing sensitive receptors” (for example, residences, greenhouses, stables, etc.) are within 300 feet of and in the general direction downwind from the site of the burn. If so, obtain written permission from the occupants or operators of those structures before you begin the burn.

Firefighter Training

Entities that conduct firefighter training may obtain authorization to conduct outdoor burning for training. To obtain the authorization, the entity responsible for the training must send a written request to the local air pollution control agency or, if there is no such agency, the TNRCC regional office. If training occurs regularly at a dedicated facility, it may be possible to notify the regional office of all such training events with one annual written request. The TNRCC may revoke this authorization if it is used in an attempt to avoid complying with other portions of the Outdoor Burning Rule. Burning conducted to train firefighters does not have to conform with the general requirements for other forms of allowable outdoor burning.

Fires for Recreation, Ceremony, Cooking, or Warmth

Outdoor burning is allowed when used solely for recreational or ceremonial purposes, in the noncommercial preparation of food, or exclusively as a means to provide warmth in cold weather. In other words, campfires, bonfires, and cooking fires are allowed. Fires built under this exception may not contain electrical insulation, treated lumber, plastics, construction or demolition materials not made of wood, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, or items containing natural or synthetic rubber. The other general requirements on allowable outdoor burning do not apply to fires covered by this exception.

Fires for Disposal or Landclearing

This broad exception covers the five more specific categories described below.

Domestic waste. Domestic waste—in other words, household trash or rubbish—may be burned when the local governmental entity that has jurisdiction over such matters does not provide on-premises trash collection service or authorize a business or other entity to provide on-premises trash collection service. To qualify for this exception, the waste must come from a property that is both designed to be a private residence and used exclusively as a private residence for no more than three families. The waste must also be burned on the property where it was produced. According to TNRCC rules (30 TAC Section 101.1), *domestic waste*

includes those wastes that normally result from the function of life within a residence— for example, kitchen garbage, untreated lumber, cardboard boxes, packaging, clothing, grass, leaves, and branch trimmings. Such things as tires, construction debris that is not wood, furniture, carpet, electrical wire, and appliances are not considered to be domestic waste and cannot be burned. Other conditions of the general requirements for outdoor burning do not apply to the burning of domestic waste.

Diseased animal carcasses. These may be burned when burning is the most effective means of controlling the spread of disease. The general requirements for outdoor burning do not apply to this exception.

Maintenance or landclearing. Trees, brush, and other plant growth may be burned to maintain rights-of-way, clear land, or maintain the banks of water canals when there is no practical alternative and when the materials are generated only from the property on which the burning occurs. Burning carried out under this exception must conform with all of the general requirements for outdoor burning and may not produce adverse effects for structures containing sensitive receptors—for example, occupied buildings, barns, or greenhouses.

Crop residues. When there is no practical alternative, crop residues may be burned for agricultural management. This burning must meet the same conditions as maintenance burns, unless an administrative order specifically for the crop in question establishes other conditions.

Brush, trees, etc., off-site. A county or municipal government may request *site and burn approval* from the TNRCC regional office to burn accumulations of brush, trees, and other plant growth that cause a condition detrimental to public health and safety. The burn must occur at a site owned by the local government and may be authorized only when there is no practical alternative. Such burns may be done no more frequently than every two months, and may not be used in place of other sound brush management practices. Burning conducted under this exception must conform to the general requirements for outdoor burning. The burning may not occur at a municipal solid waste landfill without obtaining permission from the TNRCC beforehand.

Prescribed Burns

This exception covers the use of fire to manage forests, rangeland, wildland and wildlife, and, in 14 counties, coastal salt marsh. All of these forms of burning are subject to the general requirements for allowed burning. Coastal salt-marsh burning also entails more specific notification requirements, which are stated in Subsections 111.211(2)(A) and (B).

Pipeline Breaks and Oil Spills

Under these circumstances, the spill itself triggers a requirement under another rule (30 TAC Section 101.6) to notify the appropriate TNRCC regional office. Once notified of the spill, the regional office staff will decide whether burning is necessary to protect the public welfare. If permission to burn is given, sampling and monitoring to determine and evaluate environmental impacts also may be required.

Other Situations

If a situation seems to require outdoor burning but is not covered by the exceptions stated previously, TNRCC permission to burn may be requested. In considering whether to approve such a request, the regional office staff, acting on behalf of the executive director, will consider whether there is a practical alternative, whether the burning will cause or contribute to a nuisance or traffic hazard, and whether the practice will violate any federal or state primary or secondary ambient air quality standard. Such an authorization may require that certain procedures be followed to control or abate emissions. The authorization may be revoked at any time if the burning is found to cause a nuisance, violate any provision of an applicable permit, cause a violation of any air quality standard, or not conform with the specified conditions.

GENERAL REQUIREMENTS FOR BURNING

The Outdoor Burning Rule sets the following general requirements for allowable outdoor burning. These requirements apply to the specific situations for which they are mentioned above. They are designed to reduce the likelihood that burning will create a nuisance, cause a hazard, or harm the environment. The party responsible for the burn remains liable for damages, injuries, or other consequences that may result from burning, even when it is carried out in compliance with these regulations.

1. Notify the Texas Forest Service before carrying out any prescribed or controlled burns that are intended for forest management.
2. Burn only outside the corporate limits of a city or town, unless the incorporated city or town has an ordinance that permits burning and is consistent with the Texas Clean Air Act Subchapter E (TCAA).
3. Begin or continue burning only when the wind direction and other weather conditions are such that the smoke and other pollutants will not present a hazard to any public road, landing strip, or navigable water (e.g., lake, river, stream, or bay) or have an adverse effect on any off-site structure containing “sensitive receptors” (e.g., a residence, business, farm building, or greenhouse).

4. Post someone to flag traffic if at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway.
5. Keep fires downwind of or at least 300 feet away from any neighboring structure that contains sensitive receptors. This requirement may be waived only with the prior written approval of whoever owns or rents the adjacent property *and* either resides or conducts business there.
6. Begin burning no earlier than one hour after sunrise, end it the same day and no later than one hour before sunset, and make sure that a responsible party is present while the burn is active and the fire is progressing. At the end of the burn, extinguish isolated residual fires or smoldering objects if the smoke they produce can be a nuisance or a traffic hazard. Don't start burning unless weather conditions are appropriate for smoke to dissipate (winds of at least 6 miles per hour; no temperature inversions) and for you to be able to control the fire (winds no faster than 23 miles per hour).
7. Don't burn any electrical insulation, treated lumber, plastics, construction or demolition materials not made of wood, heavy oils, asphaltic materials, potentially explosive materials, chemical wastes, or items that contain natural or synthetic rubber.

PRACTICAL ALTERNATIVES TO BURNING

The Outdoor Burning Rule defines a *practical alternative* as “an economically, technologically, ecologically, and logistically viable option.” The following methods can sometimes serve as practical alternatives to burning as a means to dispose of waste. With creative thinking and the help of the local TNRCC regional office, you may be able to develop still other ways to avoid burning your waste.

Recycling. Manually or mechanically separate salvageable metals from other material, and sell them at a salvage yard.

Composting. Wastes from landscape maintenance can often be composted on-site easily and cleanly. Other similar wastes—even paper, in some instances—can be composted under the right conditions.

Mechanical chipping or mulching. This could be the first step in composting wastes, or the mulch that is produced could be put to use for soil enrichment and moisture retention. In some cases, the mulch could become a marketable product, be put to use where it is produced, or be given to individuals or nurseries. If the material cannot be used as a landscape mulch, chipping can still be useful to reduce the volume of waste that must be disposed of by some other means.

Logging. Timber can be sometimes be converted to a marketable product—lumber, pulp, or firewood—as one way to reduce the costs of disposal. The remaining small limbs and brush are then much easier to dispose of through one of the other alternatives.

Landfills. Some landfills have recycling centers, with chippers for wood waste and collection bins for paper, plastic, and glass. Type IV landfills accept brush. Contact your local landfills for details.

Trench burning. Many landclearing contractors have portable devices, known as *trench burners* or *air curtain destructors*, that can be used to dispose of brush or untreated lumber with very little pollution. Many of the contractors and distributors provide leasing services. You may contact the nearest TNRCC regional office for a list of trench burner contractors in your area.

RELATED TNRCC PUBLICATIONS

The TNRCC has a variety of publications available on issues related to outdoor burning. Many of them provide detailed explanations of specific alternatives to outdoor burning, for example:

- GI-007: *Used Oil Recycling in Texas*
- GI-013: *Tire Recycling in Texas*
- GI-036: *Composting and Mulching*
- GI-111: *Texas Municipal Compost Marketing Manual*

To order single copies of these or other TNRCC publications, call the Publications Section at (512) 239-0028 or write:

TNRCC Publications MC-195
PO Box 13087
Austin TX 78711-3087

Frequently Asked Questions

The questions in this section were compiled by the TNRCC regional offices. They are actual questions frequently asked about outdoor burning by the general public and the regulated community.

GENERAL QUESTIONS

Burning Permit?

How do I obtain a burning permit from the TNRCC?

You don't: The TNRCC does not issue burning permits. Outdoor burning in general is prohibited in the state of Texas, although the TNRCC Outdoor Burning Rule (Appendix B of this brochure) does allow certain exceptions. If your situation fits all requirements for one of the exceptions described in the rule, you may conduct burning, as long as you comply with the burn conditions specified in the rule. Depending on the circumstances, you may also need the approval of the appropriate regional office before you burn. Remember to also check local ordinances or other regulations about burning. (See the next question for further details.)

Not an Exception, but No Practical Alternative

My situation doesn't fit any of the exceptions given in the rule, but I still think that burning is the only practical alternative. What can I do?

Submit a written request to the TNRCC regional office that serves the area where you think you need to conduct outdoor burning. Acting on behalf of the executive director, the regional staff will review your request and try to find a practical alternative. If they agree that none can be found, they will provide you a written authorization to burn that outlines specific conditions you must follow to control the emissions.

When to Notify the TNRCC?

The rule authorizes (or the TNRCC has authorized) my outdoor burning. Before I actually set the fire, do I have to notify the TNRCC?

It depends. For certain types of burning, you must notify the TNRCC regional office. For others, you don't have to notify the TNRCC. But before you strike that match, remember that you may also have to contact other agencies—or even your neighbors—as well as the TNRCC. See Table 1 for the notification requirements for the various kinds of burning covered under the rule. Even if the rule doesn't require you to notify the TNRCC, you will find that the local regional office has up-to-date information about weather conditions and other factors you should

consider before doing any outdoor burning—for example, which way (and how fast) the wind is blowing, whether winds are expected to shift, whether your area is under a temperature inversion, the exact local time of sunrise or sunset, and whether high ozone levels are forecast.

What about My Neighbors?

It looks like I can get the TNRCC's approval to burn, but my neighbors may complain. Do I have to worry about what they think?

Yes, you might. Besides the issue of common courtesy, the Outdoor Burning Rule requires that certain kinds of burning be conducted downwind of or at least 300 feet from any structure containing sensitive receptors (for example, a residence, business, barn, or greenhouse) located on adjacent properties unless written approval is obtained beforehand from the owner or occupant—the one who will suffer adverse effects—of the adjacent or downwind property.

Do Local Rules Apply?

We are burning in compliance with TNRCC regulations, but the local fire marshal objects. Is our compliance with state rules not enough?

Your compliance with TNRCC regulations does not mean that other, stricter laws, regulations, or ordinances cannot be enforced by city, county, or other governmental entities. You must comply with all such regulations as well as the TNRCC rules.

Reporting Illegal Burning

How do I report somebody who is conducting illegal outdoor burning?

Report the burning to the local air pollution control office, or the nearest TNRCC regional office.

FIREFIGHTER TRAINING

We want to conduct fire training for our volunteer fire department (VFD). Can we burn this abandoned house?

The training of firefighters may be authorized as an exception to the prohibition on outdoor burning. To qualify, submit a written request on behalf of the VFD to the local air pollution control agency, or, if there is no local agency, the nearest TNRCC regional office. Authorization may be granted orally or in writing. According to the rule, the burning shall be authorized unless your VFD receives a notice of denial within 10 working days after the date of postmark or the date of personal delivery of the

request. (Working days do not include Saturdays, Sundays, or state or federal holidays.)

FIRES FOR DISPOSAL

At Landfills

What may be burned at municipal solid waste landfills?

No routine burning is allowed at municipal solid waste landfills, unless otherwise authorized by the TNRCC in writing.

Landclearing

Inside City Limits

I have some uncleared property inside the city limits that I would like to develop. Hauling the trees and brush off would not be practical because it is too expensive. May I dispose of the trees and brush by burning?

Unless the county or municipal government has enacted ordinances that permit burning consistent with state law, this situation does not meet any of the exceptions to the prohibition on outdoor burning. You may need to consider alternatives such as chipping or trench burning. If there is no practical alternative, you may request written permission from the TNRCC for authorization to burn. Such requests are evaluated on a case-by-case basis. Contact the appropriate TNRCC regional office for guidance.

Trench Burning

Why are housing subdivisions allowed to dig pits and burn their landclearing materials within city limits?

They are using a process called air curtain trench burning, which is authorized under a standard exemption. Companies that specialize in that business must obtain prior TNRCC site approval and follow specific written operating procedures.

Plant Materials

Tree Trimming Service

I am in the business of trimming people's trees and shrubs in town. I realize that the tree limbs and trimmings can't be burned in town, but I own some land outside of town. May I take it out there and burn it?

No. The Outdoor Burning Rule allows the burning of landclearing materials only at the site where the landclearing is done. In order to burn under state law, that site must be outside of municipal corporate limits,

unless the city or town has an ordinance that permits burning and is consistent with state law.

Brush Piles

There are tree limbs in an area of our community that pose a public safety risk. What are our options for solving this problem?

Brush, trees, and other forms of plant growth that present a detriment to public health and safety may be burned by a county or municipal government at a site it owns upon receiving site and burn approval from the TNRCC. Such burning can only be authorized when there is no practical alternative, and it may be done no more than once every two months. The local government has the burden of proving that there is no practical alternative and that the growth poses a detriment to public health or safety. This procedure may not be used continually as a standard operating procedure to augment the normal brush disposal process. Such burning cannot be conducted at municipal solid waste landfills unless authorized in writing by the TNRCC.

Storm Damage

A bad storm knocked a lot of trees down in our community. May we burn the debris? May we haul it to the landfill and burn it?

Regardless of whether the brush is burned on-site or at the landfill, this type of burning is not specifically authorized in the exceptions to the prohibition on outdoor burning. However, an authorization to dispose of storm debris may be granted if there are no practical alternatives. Such requests are evaluated on a case-by-case basis. Contact the appropriate TNRCC regional office for guidance.

Domestic Trimmings

May I burn trees that I have cut down in my backyard?

Grass, leaves, and hedge and branch trimmings from residences are all considered to be “domestic waste.” If your local government does not provide or authorize a private collector to provide the collection of domestic waste, this type of material may be burned; however, the burning must not create a nuisance, and you must comply with any applicable local rules or ordinances.

Trash

Can't Afford Collection Service

I live in a small rural town where most people have their trash picked up by a commercial trash collection service. I can't afford to pay that money each month. May I burn my trash in a 55-gallon drum in my backyard?

If the local city ordinance does not make it mandatory that trash be picked up, or there is no governmentally authorized or provided on-premises trash collection service, you may burn domestic waste on the property where it is produced, as long as it is not prohibited by local rule or ordinance and does not create a nuisance.

“Domestic Waste?”

What is considered to be “domestic waste”?

Domestic waste is considered to be the garbage and rubbish normally resulting from the functions of life within a residence. It includes food waste, food packaging, residential yard, grass, leaves and branch trimmings, and clothing. It does not include tires, construction debris, furniture, carpet, appliances, and other items that residential households do not normally generate as waste.

Waste from a Business

I want to burn boxes from my business. The TNRCC rules say that I may burn waste from my residence, but what about waste from my business?

According to the Outdoor Burning Rule, you can't burn business waste. The exception that allows the burning of domestic waste applies only if the property is used exclusively as a private residence and the local governmental entity does not provide or authorize the collection of waste at the premises where the waste is generated. There is no such exception for businesses. You might want to look into the possibility of recycling your boxes or investigate ways that you or your neighbors could reuse the boxes.

Scrap Tires

We have a real hard time disposing of scrap tires. Will the TNRCC let us burn them?

No, and for at least two good reasons. First, the rule specifically prohibits the outdoor burning of tires—and any other items that contain natural or synthetic rubber—because of the air pollution that would result. Second, and of greater importance, Texas is at least as innovative as anywhere else

in the world in finding good uses for waste tires. The Waste Tire Program can give you better ideas for disposing of those old tires.

Oil and Hydrocarbons

Oil Spills

If my company has an oil spill, may we burn the oil to dispose of it?

Perhaps. The burning of oil or other hydrocarbons spilled from pipeline breaks may be allowed, if the TNRCC determines that the burning is necessary to protect the public welfare. Ask for guidance from the appropriate TNRCC regional office when you make the mandatory call (30 TAC §101.6) to notify them about the spill.

Oil Filters

May I burn my old oil filters in a metal barrel on my property?

No. Take oil filters to an authorized recycling site, along with your used oil.

AGRICULTURAL MANAGEMENT

Sugarcane Fields

Why are the sugar growers allowed to burn the cane fields?

There are no technically or economically feasible alternatives. Years ago, the Rio Grande Valley Sugar Growers, Inc., requested the authorization to burn the cane fields in association with each harvest. The TNRCC, after extended air monitoring studies, concluded that no practical alternative existed for this industry. The agency then adopted an agreed order that outlines conditions under which the sugarcane industry could conduct burning.

Crop Residue

The burning of corn stubble produces a great amount of smoke. Is this type of burning authorized?

Burning for crop management is allowed if there is no practical alternative, if it is conducted under appropriate weather conditions and at appropriate times, and if it does not cause a nuisance or traffic hazard.

RECREATIONAL AND OTHER PURPOSES

Outdoor Grills

May I cook food on my charcoal grill in my backyard?

Yes. Fires used in the noncommercial preparation of food are allowed.

Fireplaces

May I build a fire in my fireplace?

Yes. Fires used exclusively for the purpose of supplying warmth during cold weather are allowed.

Campfires

Are campfires allowed inside the city limits?

Fires used solely for recreational or ceremonial purposes are allowed by state law; however, local ordinance may prohibit this burning. Make sure no oils, asphalt, synthetic rubber, or other materials that produce heavy smoke are in the fire: they could cause a nuisance or traffic hazard.



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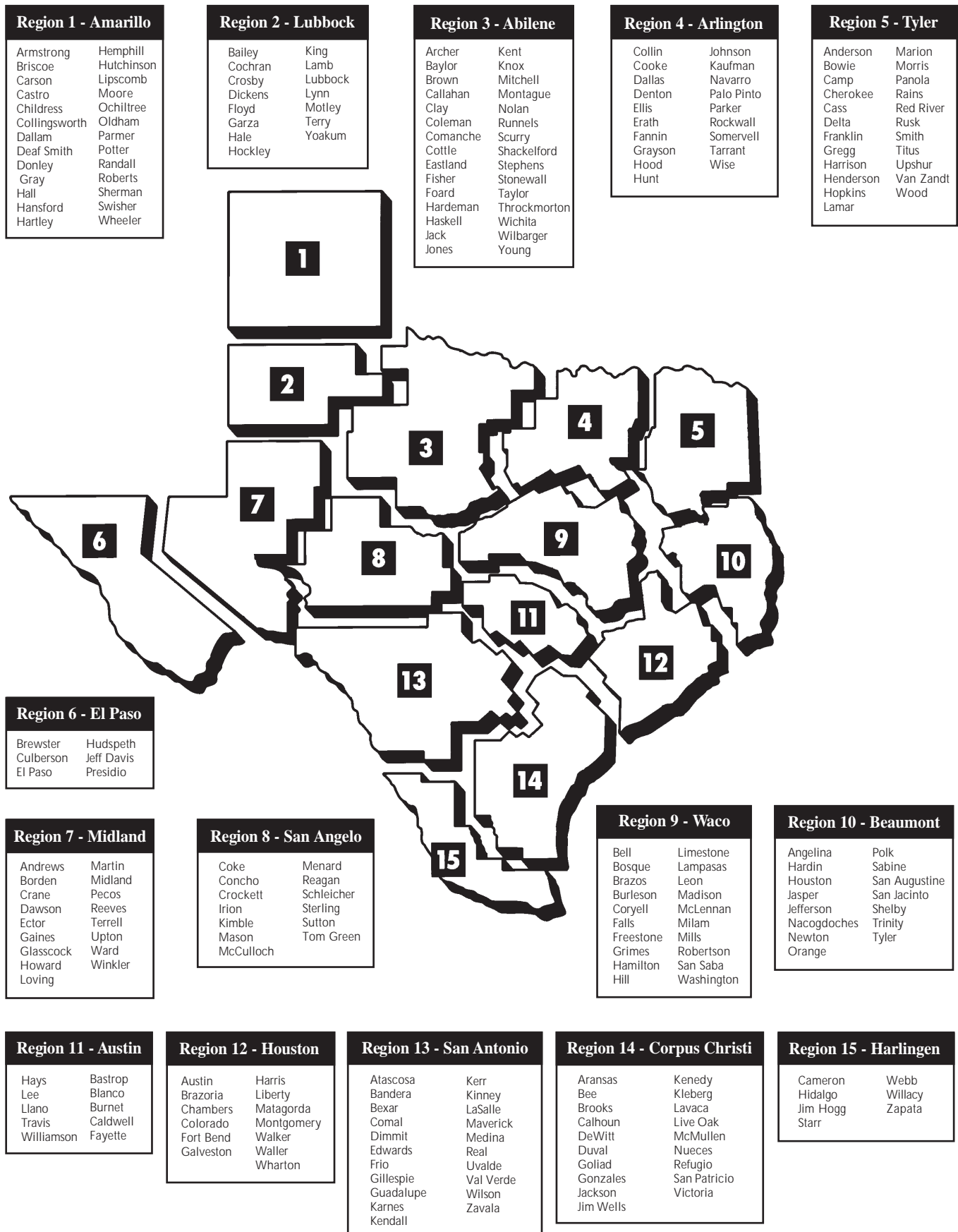
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TNRCC REGIONS

(including counties in each region)



Appendix B

The Outdoor Burning Rule, which has been in effect since September 16, 1996, is reproduced below from Title 30 Texas Administrative Code (30 TAC) Sections 111.201–111.221.

§111.201. General Prohibition.

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission. Outdoor disposal or deposition of any material capable of igniting spontaneously, with the exception of the storage of solid fossil fuels, shall not be allowed without written permission of the executive director. The term “executive director,” as defined in Chapter 3 of this title (relating to Definitions), includes authorized staff representatives.

§111.203. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Extinguished — The absence of any visible flames, glowing coals, or smoke.

Landclearing operation — The uprooting, cutting, or clearing of vegetation in connection with conversion for the construction of buildings, rights-of-way, residential, commercial, or industrial development, or the clearing of vegetation to enhance property value, access or production. It does not include the maintenance burning of on-site property wastes such as fallen limbs, branches, or leaves, or other wastes from routine property cleanup activities, nor does it include burning following clearing for ecological restoration.

Practical alternative — An economically, technologically, ecologically and logistically viable option.

Prescribed burn — The controlled application of fire to naturally occurring vegetative fuels under specified environmental conditions and confined to a predetermined area, following appropriate planning and precautionary measures.

Structure containing sensitive receptor(s) — A man-made structure utilized for human residence or business, the containment of livestock, or the housing of sensitive live vegetation. The term “man-made structure” does not include such things as range fences, roads, bridges, hunting blinds or facilities used solely for the storage of hay or other livestock feeds. The term “sensitive live vegetation” is defined as vegetation which has potential to be damaged by smoke and heat, examples of which include, but are not limited to: nursery production, mushroom cultivation, pharmaceutical plant production, or laboratory experiments involving plants.

Sunrise/Sunset — Official sunrise/sunset as set forth in the United States Naval Observatory tables available from National Weather Service offices.

Wildland — Uncultivated land other than fallow, land minimally influenced by human activity, and land maintained for biodiversity, wildlife forage production, protective plant cover, or wildlife habitat.

§111.205. Exception for Fire Training.

(a) Outdoor burning shall be authorized for training firefighting personnel when requested in writing and when authorized either verbally or in writing by the local air pollution control agency. In the absence of such local entities, the appropriate commission regional office shall be notified. The burning shall be authorized if notice of denial from the local air pollution control agency, or commission regional office is not received within 10 working days after the date of postmark or the date of personal delivery of the request.

(b) Facilities dedicated solely for firefighting training, at which training routinely will be conducted on a frequency of at least once per week, shall submit an annual written notification of intent to continue such training to the appropriate commission regional office and any local air pollution control agency.

(c) Facilities dedicated solely for firefighting training, at which training is conducted less than weekly, shall provide an annual written notification of intent, with a telephone or electronic facsimile notice 24 hours in advance of any scheduled training session. No more than one such notification is required for multiple training sessions scheduled within any one-week period, provided the initial telephone/facsimile notice includes all such sessions. Both the written and telephone notifications shall be submitted to the appropriate commission regional office and any local air pollution control agency.

(d) Authorization to conduct outdoor burning under this provision may be revoked by the executive director if the authorization is used to circumvent other prohibitions of this subchapter.

§111.207. Exception for Fires Used for Recreation, Ceremony, Cooking, and Warmth.

Outdoor burning shall be authorized for fires used solely for recreational or ceremonial purposes, or in the noncommercial preparation of food, or used exclusively for the purpose of supplying warmth during cold weather. Such burning shall be subject to the requirements of §111.219(7) of this title (relating to General Requirements for Allowable Outdoor Burning).

§111.209. Exception for Disposal Fires.

Outdoor burning shall be authorized for:

(1) Domestic waste burning at a property designed for and used exclusively as a private residence, housing not more than three families, when collection of domestic waste is not provided or authorized by the local governmental entity having jurisdiction, and when the waste is generated only from that property. Provision of waste collection refers to collection at the premises where the waste is generated. The term “domestic waste” is defined in §101.1 of this title, (relating to Definitions). Wastes normally resulting from the function of life within a residence that can be burned include such things as kitchen garbage, untreated lumber, cardboard boxes, packaging (including plastics and rubber), clothing, grass, leaves, and branch trimmings. Examples of wastes not considered domestic waste which can not be burned, include such things as tires, non-wood construction debris, furniture, carpet, electrical wire and appliances.

(2) Diseased animal carcass burning when burning is the most effective means of controlling the spread of disease.

(3) On-site burning of trees, brush, and other plant growth for right-of-way maintenance, landclearing operations, and maintenance along water canals when no practical alternative to burning exists and when the materials are generated only from that property. Structures containing sensitive receptors must not be negatively affected by the burn. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning). When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. For a single project entailing multiple days of burning, an initial notice delineating the scope

of the burn is sufficient if the scope does not constitute circumvention of the rule for a continual burning situation. Commission notification or approval is not required.

(4) Crop residue burning for agricultural management purposes when no practical alternative exists. Such burning shall be subject to the requirements of §111.219 of this title, and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required. This section is not applicable to crop residue burning covered by an administrative order.

(5) Brush, trees, and other plant growth causing a detrimental public health and safety condition may be burned by a county or municipal government at a site it owns upon receiving site and burn approval from the executive director. Such a burn can only be authorized when there is no practical alternative, and it may be done no more frequently than once every two months. Such burns can not be conducted at municipal solid waste landfills unless authorized under §111.215 of this title (relating to Executive Director Approval of Otherwise Prohibited Outdoor Burning), and shall be subject to the requirements of §111.219 of this title.

§111.211. Exception for Prescribed Burn.

Outdoor burning shall be authorized for:

(1) Prescribed burning for forest, range and wildland/wildlife management purposes, with the exception of coastal salt-marsh management burning. Such burning shall be subject to the requirements of §111.219 of this title (relating to General Requirements for Allowable Outdoor Burning), and structures containing sensitive receptors must not be negatively affected by the burn. When possible, notification of intent to burn should be made to the appropriate commission regional office prior to the proposed burn. Commission notification or approval is not required.

(2) Coastal salt-marsh management burning conducted in Aransas, Brazoria, Calhoun, Chambers, Galveston, Harris, Jackson, Jefferson, Kleberg, Matagorda, Nueces, Orange, Refugio, and San Patricio Counties. Coastal salt-marsh burning in these counties shall be subject to the following requirements:

(A) All land on which burning is to be conducted shall be registered with the appropriate commission regional office using a United States Geological Survey map or equivalent upon which are identified

significant points such as roads, canals, lakes, and streams, and the method by which access is made to the site. For large acreage, the map should be divided into manageable blocks with identification for each defined block. The information must be received for review at least 15 working days before the burning takes place.

(B) Prior to any burning, notification, either verbal or written, must be made to, and authorization must be received from the appropriate commission regional office. Notification must identify the specific area and/or block to be burned, approximate start and end time, and a responsible party who can be contacted during the burn period.

(C) Such burning shall be subject to the requirements of §111.219 of this title.

§111.213. Exception for Hydrocarbon Burning.

Outdoor burning shall be authorized for hydrocarbon burning from pipeline breaks and oil spills only upon proper notification as set forth in §101.6 of this title (relating to Notification Requirements for Major Upset), and if the executive director has determined that the burning is necessary to protect the public welfare. Sampling and monitoring may be required to determine and evaluate environmental impacts.

§111.215. Executive Director Approval of Otherwise Prohibited Outdoor Burning.

If not otherwise authorized by this chapter, outdoor burning may be authorized by written permission from the executive director if there is no practical alternative and if the burning will not cause or contribute to a nuisance, traffic hazard or to a violation of any federal or state primary or secondary ambient air standard. The executive director may specify procedures or methods to control or abate emissions from outdoor burning authorized pursuant to this rule. Authorization to burn may be revoked by the executive director at any time if the burning causes nuisance conditions, is not conducted in accordance with the specified conditions, violates any provision of an applicable permit, or causes a violation of any air quality standard.

§111.219. General Requirements for Allowable Outdoor Burning.

Outdoor burning which is otherwise authorized shall also be subject to the following requirements when specified in any section of this subchapter.

(1) Prior to prescribed or controlled burning for forest management purposes, the Texas Forest Service shall be notified.

(2) Burning must be outside the corporate limits of a city or town except where the incorporated city or town has enacted ordinances which permit burning consistent with the Texas Clean Air Act, Subchapter E, Authority of Local Governments.

(3) Burning shall be commenced and conducted only when wind direction and other meteorological conditions are such that smoke and other pollutants will not cause adverse effects to any public road, landing strip, navigable water, or off-site structure containing sensitive receptor(s).

(4) If at any time the burning causes or may tend to cause smoke to blow onto or across a road or highway, it is the responsibility of the person initiating the burn to post flag-persons on affected roads.

(5) Burning must be conducted downwind of or at least 300 feet (90 meters) from any structure containing sensitive receptors located on adjacent properties unless prior written approval is obtained from the adjacent occupant with possessory control.

(6) Burning shall be conducted in compliance with the following meteorological and timing considerations:

(A) The initiation of burning shall commence no earlier than one hour after sunrise. Burning shall be completed on the same day not later than one hour before sunset, and shall be attended by a responsible party at all times during the active burn phase when the fire is progressing. In cases where residual fires and/or smoldering objects continue to emit smoke after this time, such areas shall be extinguished if the smoke from these areas has the potential to create a nuisance or traffic hazard condition. In no case shall the extent of the burn area be allowed to increase after this time.

(B) Burning shall not be commenced when surface wind speed is predicted to be less than six miles per hour (mph) (five knots) or greater than 23 mph (20 knots) during the burn period.

(C) Burning shall not be conducted during periods of actual or predicted persistent low level atmospheric temperature inversions.

(7) Electrical insulation, treated lumber, plastics, non-wood construction/demolition materials, heavy oils, asphaltic materials,

potentially explosive materials, chemical wastes, and items containing natural or synthetic rubber must not be burned.

§111.221. Responsibility for Consequences of Outdoor Burning.

The authority to conduct outdoor burning under this regulation does not exempt or excuse any person responsible from the consequences, damages, or injuries resulting from the burning and does not exempt or excuse anyone from complying with all other applicable laws or ordinances, regulations, and orders of governmental entities having jurisdiction, even though the burning is otherwise conducted in compliance with this regulation.

The Current Rule and the Previous Version

This section is a quick review of changes incorporated by the September 16, 1996, revision of the Outdoor Burning Rule. Officials who are familiar with the earlier rule should find this section-by-section update useful.

Section 111.201 prohibits outdoor burning within the state of Texas, except as provided in §§111.205–111.215. It also prohibits storing spontaneously combustible materials other than “solid fossil fuel” (i.e., coal) outside. The exception for coal was made to be consistent with the intent expressed in the preamble to the 1989 revisions to the rule.

The definitions in **Section 111.203** were added to remove the ambiguities and uncertainties encountered in earlier versions of the rule. With these definitions, interpretation of the rule should be more consistent. Two definitions merit further attention here:

Landclearing operation. The last sentence of this definition indicates two different kinds of exclusions. The first, for on-site property waste burns, is covered in §111.209(1); the second, for burns for ecological restoration, is covered in §111.211(1). In practice, prescribed burns and landclearing burns may have similarities: Occasionally it is necessary in a prescribed burn to bulldoze trees or brush into piles to get the appropriate effect. The key difference is the concept of “conversion.” The goal of landclearing is a major change in land use; the goal of a prescribed burn is to restore, maintain, or renew the ecosystem.

Practical Alternative. This definition contains four criteria, each of which must be considered to determine whether an alternative is practical. The standard of judgment should be that of a “reasonable person.” For example, an option that is technologically available but not economically affordable or logistically possible to implement is not practical. A method other than burning may not be practical if it cannot achieve the desired ecological outcome. An alternative that is technologically, economically, and logistically feasible is not practical if it also causes a greater ecological harm than burning.

Section 111.205 contains changes to the fire training notification procedures, which tend to make the process more streamlined by avoiding the somewhat redundant notifications required by prior versions. Section 111.219 (General Requirements for Allowable Outdoor Burning) does not apply to any portion of this section.

In §111.205(a), the principal modification to the infrequent fire training process is allowing regional or local staff 10 *working* (no longer calendar) days to review a burn request. Requests under §111.205(a) should be in the form of a letter rather than a facsimile (fax). This policy is in the best interests of the regulated community: Should something go awry, some courts do not recognize facsimiles as evidence.

In §111.205(b), the wording “...at which training routinely will be conducted...” is used to eliminate potential confusion. For example, if training is conducted weekly except during holidays and when meteorological conditions are unfavorable, the facility still would qualify under this subsection of the rule. Other similar situations may also qualify.

Section 111.205(c) has been streamlined: If multiple training sessions are to occur in the same seven-day period, one comprehensive telephone or facsimile notification prior to the first session is sufficient.

Section 111.207 is unchanged.

Section 111.209 is a philosophical departure from the previous rule in that it differentiates between the use of fire for disposal and the use of fire as a management tool. With the exception of §111.209(5), notification and approval by the agency is not mandatory, but it is encouraged. Section 111.219 (General Requirement for Allowable Outdoor Burning) is applicable for §§111.209(3), 111.209(4), and 111.209(5), but not for §§111.209(1) or 111.209(2).

Section 111.209(1) specifies that collection of domestic waste by the local governmental agency or authorized agent must occur at the premises where the waste is generated. The governmental provision of a transfer or convenience station to which residents may bring waste does not constitute collection of domestic waste; therefore, burning may take place in that instance. Any authorization of collection services by a governmental entity must be specific and well-defined. For a government merely to say it is okay for anybody to commercially collect garbage within its jurisdiction does not constitute authorized collection for the purposes of this rule.

Section 111.209(2) remains functionally unchanged.

Section 111.209(3) has been modified to emphasize negative impacts on structures containing sensitive receptors, an abandonment of the prior focus on whether a site is rural or urban. It is impractical to consistently define “rural” in a manner that is applicable throughout the state: Some areas inside large cities have “rural” characteristics, while others outside

municipalities of any size have “urban” characteristics. There is no bright-line distinction. Another change is the addition of water canals as an applicable category. As a streamlining endeavor, a single notification (not mandatory) for a multiple-day burn is okay if it does not constitute a circumvention to enable continuous burning.

Section 111.209(4) is a recognition of an agricultural practice that continues in many parts of the state. The key factor is whether a practical alternative exists. Determining whether there is a practical alternative requires evaluating such things as the type of crop, soil moisture level, soil nutrient benefits, cropping sequence, and costs of alternative disposal methods.

Section 111.209(5) was added to deal with situations in which vegetative accumulation has the potential to do such thing as obstruct the flow of water and cause flooding or provide habitat for vermin, but where it is not feasible to burn on-site because doing so would create a nuisance or traffic hazard. Each such burn requires prior approval from the regional office. A site cannot be designated by the municipality or county and used continually as a standard operating procedure to augment the normal brush disposal process. By so doing, the municipality or county establishes a de facto landfill, invoking restrictions of the Resource Conservation and Reclamation Act (RCRA). RCRA stipulations that allow the “infrequent” burning of vegetative matter provide the rationale for the two-month burn frequency. The intent is that the governmental entity will not conduct such a burn more frequently than once every two months, no matter how many sites it may have available. For example, it is not permissible for a governmental entity to conduct a burn at one site and then have another burn at another site a few days later, in essence circumventing the intent of the rule by staggering off-site fires.

Section 111.211 is a recognition of fire as a necessary management tool for particular situations for which there is no practical alternative. All such burns are subject to the General Requirements for Allowable Outdoor Burning (§111.219).

Section 111.211(1) is limited in its use by impacts upon structures with sensitive receptors. By definition, these fires are planned in detail with contingencies identified and adequately addressed. Notification of the agency or local air pollution control program is optional, but encouraged.

Section 111.211(2) has little substantive change; however, it has been streamlined. Notification no longer has to include a legal description of the land, and burn blocks are not limited to a section (640 acres). It is no

longer necessary for the party conducting the burn to provide transportation to agency staff.

Section 111.213 has been modified to require sampling and monitoring, at the discretion of the agency, to determine and evaluate environmental impacts. The intent of this section is to provide a mechanism for remediation to avoid additional environmental degradation in an emergency, as by preventing a petroleum substance from entering a waterway. Once the emergency is under control, it is not permissible to burn the material used to absorb the hydrocarbon or other wastes associated with emergency control. This section should not be used to sanction disposal.

Section 111.215 differs from §111.103(a) of the previous version of the rule only in that the regional manager may act on behalf of the executive director to approve burns that are otherwise prohibited.

Section 111.219 has many substantive changes.

Section 111.219(2) allows municipalities to enact local outdoor burning ordinances as long as those ordinances comply with Subchapter E of the TCAA. These ordinances may be more stringent than the rule, and they must comply with all the requirements of §111.219. They may not be less stringent than state law.

Section 111.219(3) is modified to address adverse impacts of smoke on public roads, landing strips, navigable water, or off-site structures containing sensitive receptor(s). The previous version of the rule had a flat prohibition against smoke going toward any such structures. This was unrealistic: Where in Texas would smoke not head toward such a structure *somewhere* downwind?

Section 111.219(5) has been changed to remove the criterion of keeping the fire 300 feet from the property line of an adjacent property containing residential, recreational, commercial, or industrial use. That criterion is overly restrictive when a residence or commercial activity is on a large tract of land and the structure is a great distance from the platted boundary. The new wording puts emphasis upon adverse impacts while also considering nuisance or traffic hazard by requiring a distance of 300 feet from a sensitive receptor that is downwind of the fire. Variance from that requirement would be permissible only with written consent of the “occupant with possessory control.” The term “occupant with possessory control” was used in lieu of the term “landowner” to cover not only resident landowners, but also lessees who have total control of the leased

property. This is particularly important when landlord is absentee: It places the protection from nuisance on the party most likely to be affected.

Section 111.219(6)(A) allows more flexible burn opportunities with the same consideration for meteorological conditions conducive to dispersion. The requirement for having a responsible party in attendance during the active burn phase does not mean someone has to be in attendance once the fire is virtually complete and is not advancing—once it is principally glowing coals with possibly some patchy residual fires. The extent of the burn may not be allowed to increase after the one-hour-before-sunset limit. A fire that has burned down to glowing coals has consumed most of the volatile substances and will not progress as a flame. It is understood that such things as stumps may burn for several days. Residual fires and/or smoldering objects that do not have the potential to create a condition of nuisance or traffic hazard need not be quenched. For example, if one is burning 100 acres with a road on one side and no sensitive structures in other directions from the burn area, it would be prudent to extinguish residual fires and/or smoldering objects within a swath along the boundary with the road where the potential for nuisance or traffic hazard exists, but allow the remaining portion of the burn site to subside at a natural rate.

Section 111.219(7) concerning prohibited burn materials has been modified to remove the prohibition upon unreasonable amounts of smoke, a concept that was unenforceable. The materials list was expanded to specifically prohibit the burning of insulated wire without prohibiting the burning of piles created by fence demolition where wire and untreated wood wastes are involved. Chemical wastes and explosive materials were added because such combustion often results in the emission of toxic substances.

Section 111.221 remains unchanged.